

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte MARC GIANOTTI

Appeal 2007-1197
Application 10/674,729
Technology Center 3700

Decided: May 23, 2007

Before, DEMETRA J. MILLS, LORA M. GREEN and
RICHARD M. LEOVITZ, *Administrative Patent Judges*.

MILLS, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134. The Examiner has rejected claims 31, 32, 40, 41, and 43-46 for anticipation. According to the Examiner, claims 66-68 and 76 contain allowable subject matter. (Br. 2.) Claim 42 is objected to as being dependent upon a rejected base claim. (Answer 2, Br. 2.) We have jurisdiction under 35 U.S.C. § 6(b). We affirm the anticipation rejections of the claims.

Claim 31 is representative.

31. A stent insertable into the body passageway, including:

a flexible self expanding braided tubular wall comprising at least one first wire helically wound at a substantially constant first pitch and at least one second wire helically wound at a substantially constant second pitch different from the first pitch whereby the first and second wires cooperate to form multiple crossing points of the at least one first wire and the at least one second wire;

wherein at selected crossing points, each of the first wire and the second wire is shaped to form an elevation extended away from the braided tubular wall in a selected direction radially of the braided tubular wall; and

wherein said elevations are arranged in at least one elevation pattern on the braided tubular wall, and the at least one elevation pattern has a third pitch different from the first pitch and different from the second pitch.

Cited References

Evans	US 5,709,713	Jan. 20, 1998
Chuter	US 5,725,547	Mar. 10, 1998

Grounds of Rejection

1. Claims 31, 32, 40, 41, and 43-46 stand rejected under 35 U.S.C. § 102(e) for anticipation over Evans.

2. Claims 31, 32, 40, 41, and 43-46 stand rejected under 35 U.S.C. § 102(e) for anticipation over Chuter.

DISCUSSION

1. Anticipation by Evans

Claims 31, 32, 40, 41, and 43-46 stand rejected under 35 U.S.C. § 102(e) for anticipation over Evans.

The Examiner contends that Evans teaches a stent, as claimed.

(Answer 3.) In particular

Evans et al teaches a self-expanding braided tubular mesh comprising first 14 and second 16 wires helically wound at a first and second pitch, respectively; wherein selected crossing points [of] each of the first and second wires are shaped to form an elevation, wherein the elevations 54 are arranged in a pattern having a third pitch different than the first pitch and different from the second pitch. (Answer 3.)

The Appellant contends that "Evans does not anticipate . . . because the flat ribbon of Evans is not wire." (Br. 5.)

We do not read the disclosure of Evans as narrowly as Appellant. Evans describes a stent made of "helically woven elements." (Col. 3, ll. 59-67.) The helically woven elements are "typically composed of metals. (Col. 3, l. 67; col. 6, ll 49-51.) "The helically woven elements will usually be flat ribbons." (Col. 3, ll. 59-67.) Evans further states that the helically woven elements form the tubular body of the prosthesis. (Col. 6, ll. 3-37.) According to Evans, the tubular body, which is comprised of the woven elements, may be composed of one or more materials. "[I]t may be desirable to fabricate the tubular body both from organic polymers . . . and from metallic elements. . . Alternatively or additionally, the interwoven elements can . . . be composed of two or more materials, particularly when the flat ribbons are composed of multiple individual filaments." (Col. 6, ll. 49-67.)

Thus, Evans discloses stents formed from helically woven elements which may be metallic. One of ordinary skill in the art reading Evans would have understood that the helically woven elements described therein need not always be in flat ribbon form. See also the relationship between claims 3 and 5 of Evans, where claim 5 states that "at least some of the helically woven elements [of claim 3] are flat ribbons, evidencing that the "helically woven elements" may be other than flat ribbon. (Col. 9, ll. 1-35.)

Furthermore, the term "wire" is defined as "1. A usually pliable metallic strand or rod made in many lengths and diameters, sometimes clad and often electrically insulated, used chiefly for structural support or to conduct electricity. 2. Something resembling a wire, as in slenderness or stiffness." The Free Online Dictionary by Farlex.¹ This is also consistent with the Examiner's definition of "wire" set forth in the Answer, page 4.² Thus, the term "wire" as used in pending claim 31, is interpreted to

¹ <http://www.thefreedictionary.com>

² Furthermore, a web search of the term "flat wire" also produced multiple search hits, further supporting that one of ordinary skill in the art would understand that the term "wire" includes "flat wire". E.g., <http://www.metals-unltd.com/> describing, "COPPER, BRASS, BRONZE, ALUMINUM STAINLESS STEEL, NICKEL ALLOY, TITANIUM, HIGH TEMPERATURE ALLOYS, AIRCRAFT ALLOYS, ALLOY STEEL, PHOSPHOR BRONZE, BERYLLIUM COPPER, LEAD, TUNGSTEN Including **Flat Wire**, Round Wire, Brass Strip, Copper Strip, Phosphor Bronze strip, Beryllium copper strip, Brass Coil, Copper Coil, Brass Wire, Beryllium Copper Tubing, **Copper Flat Wire**, Phosphor Bronze Wire, **Brass Flat Wire**, Silicon Bronze Wire." Emphasis added.

encompass metallic strands of many lengths and diameters, and would encompass the flat ribbon of Evans.

Appellant would have us interpret the term "wire" in view of the Specification, paragraphs 28 and 29, as having a cross-sectional diameter within the range of 0.01 to 0.5 mms, and as show in Fig 2. (Br. 6.) Nothing in the Specification compels us to interpret the term "wire" so narrowly. Moreover, during ex parte prosecution, claims are to be given their broadest reasonable interpretation consistent with the description of the invention in the specification. *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).

In view of the above, we conclude that the term "wire" in claim 31 encompasses flat ribbon disclosed in Evans, and thus Evans anticipates the pending claims.

2. Anticipation by Chuter

Claims 31, 32, 40, 41, and 43-46 stand rejected under 35 U.S.C. § 102(e) for anticipation over Chuter.

The Examiner contends that

Chuter teaches a stent insertable into the body passageway, including:

a flexible self-expanding braided tubular wall comprising at least one first wire 10 helically wound at a first pitch and at least one second wire 10 helically wound at a second pitch different from the first pitch whereby the first and second wires cooperate to form multiple crossing points of the at least one first wire and the at least one second wire;

wherein at selected crossing points, each of the first wire and the second wire is shaped to form an elevation 24 extended away from the braided tubular wall in a selected direction radially of the braided tubular wall; and

wherein said elevations are arranged in at least one elevation pattern on the braided tubular wall, and the at least one elevation pattern has a third pitch different from the first pitch and different from the second pitch.

(Answer 3.)

Again, the relevance of Chuter is dependent on the interpretation of claim 31. The Examiner finds that the Appellant's Specification does not define the term "substantially" with respect to the first and second pitch of the wire in claim 31. (Answer 5.)

The Examiner contends

Appellant has not claimed that the pitch is "constant" but only has to be "substantially constant". Further, with reference to the claims, it is not stated that the windings are of a substantially constant pitch [] over the entire . . . length of the stent. With that is [sic] mind, one can reasonably state that with reference to the device of Chuter [sic], the wires in a longitudinally oriented section 26 are of a substantially constant pitch in that section.

Finally, referring to figure 1 of Chuter, looking at the entire length, the stent is comprised of sections 26 and 24. Windings 10 in sections 26 have a substantially constant pitch; sections 26 further make up a larger percentage or a "substantial" portion of the stent's length and, therefore, the winding[s] are "substantially constant" over the entire length of the stent.

(Answer 5.)

Appellant contends that Chuter does not teach a substantially constant first pitch and a substantially constant second pitch because the pitch of Chuter is not "constant over the entire length of the stent." (Br. 9-10).

We agree with the Examiner that claim 31 does not require a substantially constant pitch "over the entire length of the stent." Furthermore, Appellant's Specification, Figures 1, 3, 6, and 7 depict elevations over only a portion of the stent which have a different pitch from the non-elevated portions of the stent. Therefore, according to Appellant's own Specification, the different pitches present in the stent are not "over the entire length of the stent."

Appellant would have us read the term "substantially" in the instant application as a "term of approximation." (Br. 9.) We do not find Appellant's interpretation of the term "substantially", inconsistent with the Examiner's interpretation of claim 31. In sum, we find that claim 31 does not require "a constant pitch over the entire length of the stent" and thus we find the stent of Chuter, particularly the stent having limbs of Fig. 1 (col. 3, ll. 40-45), meets the limitations of claim 31. The rejection of the claims for anticipation over Chuter is affirmed.

SUMMARY

The anticipation rejections of the claims over Evans and Chuter are affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

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